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No. 85-1424

IN THE

Supreme Court of the United States

October Term, 1985

SONAT MARINE INC. as owner of
the BARGE OCEAN STATES,

Petitioner,

v.

AMOCO OIL COMPANY and
BAYCON INDUSTRIES, INC.,

Respondents.

On Petition For a Writ of Certiorari To
The United States Court of Appeals
For The Eleventh Circuit

REPLY BRIEF OF PETITIONER BARGE OCEAN STATES

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ARGUMENT IN REPLY

THE FAULTS OF A COMPULSORY PILOT ARE NOT IMPUTED TO A PASSIVE AND OTHERWISE FAULTLESS VESSEL UNDER TOW.

For the first time since this litigation began, Amoco and Baycon[1] have acknowledged that the Barge OCEAN STATES relies on a legitimate exception to the general rule of The China, 74 U.S. (7 Wall) 53 (1869). Their brief admits that a "myriad" of decisions have ruled "that a towed vessel, which is passive and otherwise without fault, cannot be held liable in rem for damages arising from a collision caused by the fault of the towing vessel." Response at 6 (emphasis in original), citing, Sturgis v. Boyer, 65 U.S. 110 (1860). Amoco and Baycon ignored

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[1] OCEAN STATES adheres to the abbreviations utilized in its petition. In addition, citations to Amoco and Baycon's responsive brief will be referred to as "Response."

Sturgis and its progeny in their briefs to the Eleventh Circuit. They now argue to this Court that the Barge OCEAN STATES can take no comfort in Sturgis because the OCEAN STATES was not without fault. According to Amoco and Baycon, the undisputed fault of the compulsory pilot in charge of the tow must be imputed to the Barge OCEAN STATES.[2]

For the purposes of the rule of Sturgis v. Boyer, the fault of the independent compulsory pilot is not imputed to the passive vessel under tow. In each of the "myriad" of cases relied on by the

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[2] Amoco and Baycon also imply a factual dispute where none exists. There was no dispute that the compulsory pilot was entirely responsible for the collision. There was also no dispute that the compulsory pilot's fee was paid by the owners of the Barge OCEAN STATES. No review is sought of these factual determinations. The OCEAN STATES' petition concerns the erroneous legal conclusion that, under these facts, the Barge OCEAN STATES was liable, in rem.

Barge OCEAN STATES, the collision was caused by the fault of an independent pilot lawfully in control of the navigation of the entire flotilla including the passive vessel involved in the collision. In each case, the independent pilot was retained either directly or indirectly by the owner of the towed vessel. Yet, in no case was the fault of the independent pilot imputed to the passive, towed vessel. In each case, the otherwise faultless towed vessel was relieved of in rem liability.

The most obvious example is PENN VANGUARD. Tampa Ship Repair & Drydock Co. v. A.P. St. Philip, Inc., (The PENN VANGUARD), 440 F.2d 1193 (5th Cir. 1971), aff'g, 1971 A.M.C. 1549 (M.D. Fla. 1971). The passive vessel, PENN VANGUARD, was towed under the control of a compulsory pilot, who, like the pilot in this case, was neither selected nor supervised by the

owner. 1971 A.M.C. 1650. During the tow, the PENN VANGUARD was involved in a collision solely because of the fault of the compulsory pilot. Citing Sturgis v. Boyer and the long line of cases relied on by the OCEAN STATES here, the court relieved the PENN VANGUARD of liability. The pilot's fault was not imputed to the otherwise faultless PENN VANGUARD.[3]

Amoco and Baycon try to create additional confusion by arguing that fault must be imputed to the OCEAN STATES because a "master/servant" relationship existed between the barge and its compulsory pilot. However, it is well settled that a compulsory pilot is not a servant of the vessel he pilots. When the employment of a pilot is forced by the operation of law, the relationship of master and

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[3] See also the cases cited at note 5 of OCEAN STATES' petition.

servant does not arise. Homer Ramsdell Transportation Co. v. La Compagnie Generale Transatlantique, 182 U.S. 406 (1901); Park, The Law of Tug, Tow and Pilotage 1040-41 (2d Ed. 1982); Gilmore & Black, The Law of Admiralty 520-21 (2d Ed. 1975).[4]

Amoco and Baycon's argument in opposition to this petition demonstrates their fundamental misunderstanding of the rule of The China. The China imposes in rem liability on vessels under the control of a compulsory pilot, not because the fault of the compulsory pilot is imputed to the vessel. If that were the case, the exception formed by Sturgis and its progeny

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[4] The district court recognized this general rule by relieving the owners of the OCEAN STATES of in personam liability. Obviously, had the compulsory pilot been the OCEAN STATES' servant, in personam liability would have attached to the owners of the OCEAN STATES.

could not exist. Rather, the imposition of in rem liability by The China resulted from admiralty's fictional personification of the offending vessel. The vessel, even when under the control of an independent pilot, is considered to be at fault because it is an active instrument of the harm it causes.[5]

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[5] The rule of The China was extensively analyzed in The Barnstable, 181 U.S. 464 (1901). According to the Court:

> "The [vessel] is here primarily considered as the offender, or rather the offense is attached primarily to the thing . . . The vessel which commits the aggression is treated as the offender, as the guilty instrument or thing to which the forfeiture attaches . . . This was the principle upon which this Court held in the case of The China, that a vessel was liable for a collision occasioned by the fault of a compulsory pilot.

181 U.S. at 467-68 (citations omitted).

Sturgis v. Boyer and its progeny apply the rule of The China to flotillas where there are both active and passive vessels. Amoco and Baycon argue that the pilot's fault should be imputed to the entire flotilla, including its passive members. The Sturgis line of cases directly rejects this argument and holds that a passive towed vessel cannot be an active agent of the collision and therefore is not at fault. Fault is imputed only to active members of the flotilla. As the court in Sturgis put it, the towed vessel "is no more responsible for the consequences of the collision than so much freight." 65 U.S. at 122.

Throughout these proceedings the OCEAN STATES has challenged Amoco and Baycon to cite a single case imposing in rem liability on a passive, faultless vessel. Amoco and Baycon do not cite such a case to this Court nor do they cite a

case where an otherwise faultless, passive vessel under tow was held liable, in rem, as a result of the fault of a compulsory pilot. Their failure to provide this Court with citations is telling evidence that this case stands alone. The conflict in the long-settled law created by this case should be corrected by this Court, either by granting certiorari, or by remanding this case to the Eleventh Circuit with directions to consider the effect of Sturgis v. Boyer and its progeny on the Eleventh Circuit's decision.

CONCLUSION

By recognizing that Sturgis v. Boyer and its progeny form an exception to the rule of The China, Amoco and Baycon underscore the Eleventh Circuit's error. The Eleventh Circuit's decision was made entirely without reference or citation to the "myriad" of cases relied upon by Barge OCEAN STATES. This Court should resolve the conflict created by the decision below, or, at the very least, remand this case to the Eleventh Circuit with the direction to analyze the decision in light of the extensive precedent which it has erroneously overlooked.

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